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 TIGHE

Kathleen M. McDaniel, Esq.  
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June 13, 2014

**Via Hand-Delivery**

Daniel E. Shearouse  
Clerk of Court for the Supreme Court  
Supreme Court Building  
1231 Gervais Street  
Columbia, South Carolina 29201

**RECEIVED**  
JUN 13 2014  
S.C. Supreme Court

**RE: Appeal from the Public Service Commission Docket No. 2014-153-S  
Our File No. 5999.002**

Dear Mr. Shearouse:

Please find enclosed for filing the original and one (1) copy of the Petitioner's Notice of Appeal, appealing from two decisions of the Public Service Commission bearing PSC Docket No. 2014-153-S. Also enclosed is this firm's check in the amount of \$100.00 for the filing fee.

Kindly file the above and return a clocked-in copy to me via my courier. By copy of this letter, the enclosed Notice of Appeal is being served upon the Public Service Commission and counsel for the Respondents.

If you should have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

CALLISON TIGHE & ROBINSON, LLC



Kathleen M. McDaniel

KMM/kam  
Enclosures

cc: Jocelyn Boyd, Chief Clerk of the Public Service Commission  
John M. S. Hoefer, Esquire  
Jeffrey M. Nelson, Esquire

**RECEIVED**  
2014 JUN 15 AM 10:30  
PUBLIC SERVICE  
COMMISSION

THE STATE OF SOUTH CAROLINA

In the Supreme Court

**RECEIVED**  
JUN 13 2014  
S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

PSC Docket No. 2014-153-S

Arch Enterprises, LLC .....Petitioner

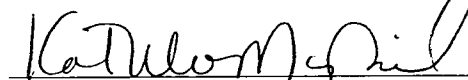
v.

Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities  
and South Carolina Office of Regulatory Staff.....Respondents

**NOTICE OF APPEAL**

Arch Enterprises, LLC appeals two decisions of the South Carolina Public Service Commission. The first decision appealed is the Public Service Commission Directive, dated May 1, 2014. The second decision appealed is the Public Service Commission of South Carolina Commission Directive, dated May 21, 2014, denying the Petition for Rehearing and Reconsideration of Arch Enterprises, LLC. Copies of the decisions appealed from are attached hereto.

CALLISON TIGHE & ROBINSON, LLC



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**ATTORNEYS FOR PETITIONER ARCH  
ENTERPRISES, LLC**

June 13, 2014  
Columbia, South Carolina

Other Counsel of Record:

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**ATTORNEY FOR RESPONDENT PALMETTO WASTEWATER RECLAMATION,  
LLC D/B/A ALPINE UTILITIES**

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**ATTORNEY FOR RESPONDENT SOUTH CAROLINA  
OFFICE OF REGULATORY STAFF**

THE STATE OF SOUTH CAROLINA

In the Supreme Court

**RECEIVED**  
JUN 13 2014  
S.C. Supreme Court

APPEAL FROM THE SOUTH CAROLINA PUBLIC SERVICE COMMISSION

PSC Docket No. 2014-153-S

Arch Enterprises, LLC .....Petitioner

v.

Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities  
and South Carolina Office of Regulatory Staff.....Respondents

**PROOF OF SERVICE**

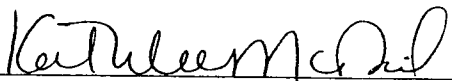
I certify that I have served the Notice of Appeal on the following by causing a copy to be mailed to the parties on June 13, 2014, at the addresses shown below:

**PALMETTO WASTEWATER  
RECLAMATION, LLC D/B/A  
ALPINE UTILITIES**

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**ATTORNEYS FOR PETITIONER  
ARCH ENTERPRISES, LLC**

June 13, 2014

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>May 01, 2014</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2014-153-S</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u>2014-400</u>

**THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.**

**SUBJECT:**

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Motion to Dismiss on an Expedited Basis Filed on Behalf of Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities.

**COMMISSION ACTION:**

We have before us for consideration a Motion to Dismiss the Complaint of Arch Enterprises, LLC d/b/a McDonalds ("Arch") filed by Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities ("Alpine"). The Complaint requests two forms of relief. The first request was for an emergency order halting disconnection of sewer service. This request was discussed with the parties shortly after the complaint was filed, and, as was stated to them – and agreed to by Alpine – was actually moot upon the filing of the complaint requesting a hearing before the Commission, pursuant to Commission Regulation 103-538 (B). The second request for relief was that the Commission hold a hearing and determine that the past due amount owed to the utility by the complainant was \$9,560.00. This amount was derived by the Complainant attempting to apply a rate approved for Palmetto Utilities in its 2013 rate case. In addition, Arch points out that this rate is proposed for adoption by the Commission for the respondent utility in this case, Alpine. The Commission has neither held a hearing, nor ruled on the Alpine rate matter.

In its Motion to Dismiss, among other arguments, Alpine cites Commission Regulation 103-533, which states that a utility must charge its customers according to schedules filed in compliance with Title 58 of the South Carolina Code of Laws, which requires approval of such schedules by the Commission. The Regulation clearly states that the utility is prohibited from charging a customer in any manner inconsistent with its filed schedules, and prescribes remedies in the event that charges outside these schedules are billed to the utility's customers. In this case, Arch requests the imposition of rates approved only for another utility company. Alpine has no such approved rates. Further, Alpine notes that the case law in South Carolina prohibits a retroactive reduction of charges imposed under a previously approved rate, which is the remedy sought by Arch in this case. In other words, Alpine states, in so many words, that granting the rate relief requested by the Complainant in this case would be unlawful. I agree with this view of the law, find it sufficient to resolve the issue in the case, and move that the Arch Complaint be dismissed on this ground, while expressly declining to rule on Alpine's other arguments.

However, there is one other matter that must be addressed. The Complaint asserts that 30-day and 10-day disconnection notices under Commission Regulation 103-535.1 were served on Arch under the Palmetto Utilities, Inc. name. Copies of the notices are in fact attached to the Complaint, and Alpine does not dispute the fact that this occurred. We are not aware of any disconnection notices that have been issued under the actual service provider in this case, Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. I believe that just as it is unlawful to charge a customer under a rate schedule approved only for a utility that does not serve the customer in question, it is also unlawful, and of no force and effect, for one utility to serve disconnection notices on the customer of a different utility. Unless the disconnection notices come from the actual utility serving the particular customer, the customer could appropriately consider the notices to be a mistake, and disregard them. Accordingly, I move that we

hold that the disconnection notices in the present case served by Palmetto Utilities were of no force and effect on Arch, since Arch was receiving service by Alpine.

PRESIDING: Hamilton

SESSION: Regular

TIME: 11:00 a.m.

	MOTION	YES	NO	OTHER
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
MC GEE	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
WHITFIELD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

(SEAL)

RECORDED BY: J. Schmieding



**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	<input type="checkbox"/>	DATE	<u>May 21, 2014</u>
MOTOR CARRIER MATTER	<input type="checkbox"/>	DOCKET NO.	<u>2014-153-S</u>
UTILITIES MATTER	<input checked="" type="checkbox"/>	ORDER NO.	<u></u>

**SUBJECT:**

DOCKET NO. 2014-153-S - Arch Enterprises, LLC d/b/a McDonalds, Complainant/Petitioner v. Palmetto Wastewater Reclamation, LLC d/b/a Alpine Utilities, Defendant/Respondent - Discuss with the Commission the Petition for Rehearing and Reconsideration Filed on Behalf of Arch Enterprises, LLC.

**COMMISSION ACTION:**

I know that the rest of the Commissioners join me in thanking Arch Enterprises for providing the opportunity for further clarification of our ruling dismissing its complaint against Palmetto Wastewater Reclamation LLC d/b/a Alpine Utilities. Arch has filed a Petition for Rehearing and Reconsideration in this matter. I move that we deny the Petition.

First, Arch complains that it received no notice that anything related to its complaint would be heard and decided by the Commission on May 1, 2014, nor was it indicated that dispositive action could result at the Commission's agenda session. Arch quotes the specific language of the Agenda Item, which said: "Discuss with the Commission the Motion to Dismiss on an expedited basis filed on behalf of Palmetto Wastewater Reclamation, d/b/a Alpine Utilities." I would point out that at the beginning of the full agenda, the following language appeared: "Commission Action on the Following Items." I believe that the language in the agenda item itself was sufficient notice. However, the item language and the "Commission Action" language taken together provided clear notice that the Motion to Dismiss would be discussed by the Commission, and that the Commission could act on the motion at the time of the meeting. The lack of notice allegation is clearly without merit.

Arch further states that the Commission's ruling dismissing the Complaint was issued without any opportunity for the Complainant to be heard on the matter. This allegation is also without merit. The Motion to Dismiss specifically requested that the "Motion be considered on an expedited basis without oral argument ...." Commission Regulation 103-829 (A) specifically states that responses to written motions are due within 10 days after service of such motions. Arch did not meet this deadline, and failed to file a response to the Motion to Dismiss. Accordingly, it did not avail itself of its right to respond to the Motion, so it cannot now legitimately complain that it did not have an opportunity to be heard on the matter. Further, since Arch failed to file a response to the Motion, the Motion to Dismiss the Complaint in this matter was unopposed, based on the Commission's record.

In addition, as Arch states in its present Petition, Regulation 103-829 (B) gives the Commission the discretion to hear oral argument and response on prefiled motions in advance of the hearing on the merits of the case, or at the merits hearing. Because the Company's Motion to Dismiss was unopposed, based upon a review of the record, the question of holding oral arguments was moot, either in advance of the hearing or at the time of a scheduled hearing on the merits. Further, under Commission Regulation 103-803, waiver of the provisions allowing oral arguments was appropriate due to the non-contested nature of the

Motion to Dismiss, and, under the circumstances of this case, was not contrary to the public interest. This Commission may dismiss complaints without hearing when the complainant fails to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. However, for sake of clarity, I move that we also specifically find that we have waived the provisions allowing oral arguments in granting the Company's request for dismissal. It is not contrary to the public interest to forego oral argument or hearing when relief cannot be granted in any event based on the face of the Petitioner's pleadings. This procedure is consistent with that used by other State tribunals.

Arch also alleges that the Commission erred in concluding that its request for a reduction in previously charged rates would amount to prohibited retroactive rate making. I continue to believe that there was no error in this conclusion, based on the same reasoning discussed in our original Order in this matter. I also believe that we should affirm our holding that Arch's desire to adopt the rates of another wastewater company is unlawful. Essentially, we dismissed the complaint because it failed to state facts sufficient to constitute a claim upon which relief could be granted by this Commission. This was because the complaint requested either rates that, if granted, would constitute retroactive ratemaking, or rates that had only been approved for another wastewater utility. In conclusion, our dismissal of the Arch Complaint was proper and consistent with the law, and was based on settled regulatory principles. Further, since the complaint was properly dismissed, the scheduled hearing was properly cancelled by the Standing Hearing Officer's Directive of May 6, 2014.

Accordingly, I move that Arch's Petition for Rehearing and Reconsideration be denied.

PRESIDING: Hamilton

SESSION: Regular

TIME: 2:00 p.m.

	MOTION	YES	NO	OTHER	
FLEMING	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HALL	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HAMILTON	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
HOWARD	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
MC GEE	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Annual Leave
RANDALL	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>		
WHITFIELD	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>Absent</u>	Commission Business

(SEAL)

RECORDED BY: J. Schmieding

